again serve as consideration. This is true whether the second contract is between the original contracting parties or with a third party. *Vanderbilt* v. *Schreyer* (1883) 91 N. Y. 392; *Seybolt* v. *Railroad Co.* (1884) 95 N. Y. 562. Hence, where parties are engaged to be married, a promise made by one of the contracting parties, or by a third party, in consideration of marriage, is void for want of consideration. But under certain circumstances this would not occur. If the parties at the time of the mutual promises of marriage, also promised expressly or impliedly to make a marriage settlement, the latter would be supported by the original agreement, *Peck* v. *Vandemark* (1885) 99 N. Y. 29; or if the original promises were conditioned, expressly or impliedly, on a marriage settlement being entered into, the latter would be supported by valuable consideration; or if, the original promises being absolute, all the parties voluntarily enter into a new arrangement containing the marriage settlement, the original promises may be considered as rescinded and there is a sufficient consideration. *Lattimore* v. *Harsen* (N. Y. 1817) 14 Johns. 330. The consideration, of course, could operate in favor of those only who gave it, *Tweddle* v. *Atkinson* (1861) 1 B. & S. 393; but in those jurisdictions following *Dutton* v. *Poole* (1679) 1 Vent. 332, *Todd* v. *Weber* (1884) 95 N. Y. 181, the children of the marriage might be allowed to sue; and where the broad beneficiary ground is taken, *Hendrick* v. *Lindsey* (1876) 93 U. S. 143, any beneficiary might sue.

The facts in the principal case would probably have fallen within either the last or the second of the schemes suggested above and the case could thus have been decided for the plaintiff on strict principle. On the other hand, the court might have avowedly disregarded principle, and relying on the results of decided cases, have laid down the rule that contracts in contemplation of marriage should be enforced without consideration. 2 Kent, Com. (11th ed.) 158. But to claim that there was consideration, citing *Shadwell* v. *Shadwell* (1860) 9 C. B. N. S. 159, and *Coverdale* v. *Eastwood* (1873) L. R. 15 Eq. 121, without going into some such analysis as the foregoing, could not but lead to confusion.

EQUITABLE SUPERVISION OF CONTRACTS FOR PERSONAL SERVICES.—It is a well-known rule that a court of equity will not decree specific performance of a contract, even though the remedy at law is clearly inadequate, unless the contract be "such that the court is able to make an efficient decree for its specific performance, and is able to enforce its own decree when made." Pomeroy, Eq. Jur. (3rd ed.) § 1405. Conspicuous among the classes of contract which come within the operation of this rule are those involving continuous performance, or personal skill. Prolonged supervision and nice criticism and direction have been considered beyond the power of the courts to bestow. *Ewing* v. *Litchfield* (1895) 91 Va. 575; *Blanchard* v. *Detroit Co.* (1875) 31 Mich. 43. The discretion of equity, however, is not to be deemed hidebound, and with increasing needs it has been in certain cases somewhat extended. In building contracts where the work is to be done on land which the defendant has acquired from the plaintiff pursuant to the contract, clear inadequacy of legal remedy has led the courts to give specific performance, provided the work, though complex, is accurately defined. *Storer* v. *Railway Co.* (1842) 2 Y. & C. Ch. 48;

Gregory v. *Lugwersen* (1880) 32 N. J. Eq. 199; *Mayor* v. *Emmons* L. R. [1901] 1 K. B. 515; *Lawrence* v. *Railway Co.* (N. Y. 1885) 36 Hun 467. Even more extreme examples are found in the "railroad cases." Specific performance is frequently obtained by enjoining operation unless the railroad lives up to its contract. *Prospect Park etc. Ry. Co.* v. *Railway Co.* (1894) 144 N. Y. 152. And it is said that if the substance of the agreement is such as to warrant equitable relief, that relief will not "depend on the use of a negative rather than an affirmative form of expression," but that the court will give affirmative or negative relief as it sees fit. *Wolverhampton Ry. Co.* v. *Railway Co.* (1873) L. R. 16 Eq. 433. Hence the courts have gone so far as to decree affirmatively the performance of contracts to operate railway systems. *Schmidt* v. *Railroad Co.* (1897) 101 Ky. 441; *Union Co.* v. *Chicago Co.* (1896) 163 U. S. 564; *Louisville Co.* v. *Illinois Co.* (1898) 174 Ill. 448.

When we turn to contracts for purely personal services or skill, we find that the difficulty of supervision is not so readily brushed aside. Performance being largely contingent on the will of the party, equity can give no effective affirmative relief. *Rutland Marble Co.* v. *Ripley* (1870) 10 Wall. 339; *Kemble* v. *Kean* (1829) 6 Sim. 333; *Sanquerico* v. *Benedetti* (N. Y. 1847) 1 Barb. 315. The courts have confined themselves to the enforcement of negative covenants, a jurisdiction established only after much conflict. *Lumley* v. *Wagner* (1852) 1 De G. M. & G. 604; *Duff* v. *Russell* (1891) 60 N. Y. Super. Ct. 80; 133 N. Y. 678, and entertained only where the services are special or extraordinary, *Carter* v. *Ferguson* (N. Y. 1890) 58 Hun 569, the test being "whether a substitute for the employee can readily be obtained." *Johnston Co.* v. *Hunt* (N. Y. 1892) 66 Hun 504. It appears, therefore, that contracts of personal service of which specific performance will be decreed form a class much narrower than those previously mentioned, not only as regards the degree of supervision possible, but as regards the character of services for which the remedy at law is deemed inadequate.

Both of these limitations seem to have been disregarded in the recent case of *Turner* v. *Hampton* (Ky. 1906) 97 S. W. 761. In that case the plaintiff, having been engaged as a school teacher, was prevented from entering upon her duties by the trustees who had hired another teacher. The court held that the plaintiff should have a remedy by injunction. In view of Professor Ames' definition that "equity will not compel specific performance by a defendant, if, after performance, the common law remedy for damages would be his sole security for the performance of the plaintiff's side of the contract," 3 COLUMBIA LAW REVIEW 2, it would seem that, if the accepted cases are adhered to, there is no mutuality in this case. The defendant, under *Lumley* v. *Wagner, supra,* could not have gained specific performance of the teacher's services, and if he had asked for an injunction enforcing an implied negative covenant, it would have been denied on the ground that the services were not sufficiently hard to replace. *Carter* v. *Ferguson, supra; Jewelry Co.* v. *O'Brien* (1897) 70 Mo. App. 432. The result is an extension of equity's power of supervision beyond any point hitherto reached. It can be supported only by the adoption of the theory, sometimes advanced, that all persons are, like land, unique, and that the remedy at law for a breach of contract involving personal services is in every case inadequate. See 6 COLUMBIA LAW REVIEW 91.

CIVIL LIABILITY OF ABUTTING OWNERS FOR OBSTRUCTION OF HIGHWAYS.—The proper use of a public highway is determined by the rights arising from a three-cornered relationship between the abutter, the highway authorities and the public as users. The measure of the duty of the abutter toward the State on the one hand, and the public as users on the other, is the same, in the former the remedy being by indictment for public nuisance, in the latter by civil action where private injury has resulted. *Brayton* v. *Fall River* (1873) 113 Mass. 218. But the measure of the duty of the public users toward the State and toward the abutter is not the same. Toward the highway authorities as agents of the State, the user owes the duty of observing reasonable care not to injure the highway itself, while toward the abutter the duty is to confine the use of the highway within the limits of the easement granted. *Cf.* 7 COLUMBIA LAW REVIEW 55. It follows that the reciprocal rights of user against the highway authorities and the abutter respectively are to be recognized as different in extent and arising from distinct relationships. The rights of the public against the State proceed from a duty of affirmance assumed by the State to provide a reasonably safe means of passage. *Morse* v. *Inhabitants of Belfast* (1886) 77 Me. 44; *Tarker* v. *Inhabitants of Farmingdale* (1893) 85 Me. 523. The duty of the State, therefore, as regards obstructions does not extend beyond the beaten path, *Wright* v. *Saunders* (N. Y. 1866) 65 Barb. 214; *Dickey* v. *Telegraph Co.* (1859) 46 Me. 483; *Commonwealth* v. *King* (Mass. 1842) 13 Metc. 115; *cf. Dubois* v. *Kingston* (1886) 102 N. Y. 219, except where the obstruction tends to render the beaten path unsafe, as by frightening animals. *Young* v. *New Haven* (1872) 39 Conn. 435; *Foshay* v. *Glen Haven* (1870) 25 Wis. 288. The rights of the public as against the abutter, on the other hand, relate to a duty of forbearance cast upon the abutter, not to interfere with the easement acquired by the public. This easement, being one of free and unobstructed passage, may be interfered with by an obstruction anywhere within the limits of the strip, and the duty of the abutter extends, therefore, outside the traveled path. *Johnson* v. *Whitfield* (1841) 18 Me. 286; *Harrower* v. *Ritsen* (N. Y. 1861) 37 Barb. 301.

A recent case, in which the plaintiff had been injured through the overturning of a buggy by a heap of compost placed by the abutting owner at the side of the road, seems to have ignored this distinction. *Sweet* v. *Perkins* (1906) 101 N. Y. Supp. 163. The court, by a vote of 3 to 2, reversed a judgment for the plaintiff, the majority opinion apparently regarding the rights of users against the abutter as no greater than those against the highway authorities, and citing for its position only cases involving the latter relationship. It is, of course, true that the abutter may be justified in certain uses of the highway outside the beaten path. The presumption being that he owns the fee to the center, *White* v. *Godfrey* (1867) 97 Mass. 473, he has the exclusive right and profit in the soil for any use not incompatible with the public easement. *Adams* v. *Emerson* (Mass. 1827) 6 Pick. 57; *Pomeroy* v. *Mills* (1830) 3 Vt. 279. Even temporary obstructions are permissible, if reasonably necessary to the use of the land, *Callanan* v. *Gilliman* (1887) 107 N. Y. 360, such as loading or unloading goods, depositing building materials, etc. *Commonwealth* v. *Parsmore* (Pa. 1814) 1 S. & R. 217; *Pettis* v. *Johnson* (1871) 56 Ind. 139. And a few permanent obstructions have been declared not unlawful, such as shade trees, *Clark* v. *Dasso* (1876) 34 Mich. 86; *Bells* v. *Belknap* (1873) 36

Ia. 583; *cf. Castleberry* v. *Atlanta* (1884) 74 Ga. 164, or other objects of general public benfit. *Savage* v. *Salem* (1893) 23 Ore. 281; *cf. People* v. *Carpenter* (1849) 1 Mich. 273. The result of these cases seems to be that the abutter may, outside the traveled path, cause temporary obstructions only when reasonably necessary and permanent obstructions only if clearly conducive to the public benefit. Beyond these points obstructions are unlawful, and one suffering injury as a proximate result of their existence, *Brayton* v. *Fall River, supra,* should recover against the abutter without regard to the latter's negligence, *Matthews* v. *Railway Co.* (1887) 26 Mo. App. 75. The loose application of principles governing the liability of highway authorities seems, therefore, to have led to an erroneous conclusion in the principal case.

FORCE OR FEAR IN ROBBERY.—Although at one time in the history of the common law it would seem that to constitute the crime of robbery it was necessary to have both a violent assault and a putting in fear, 3 Co. Inst. 68, this idea did not continue in the law, 1 Hale P. C. 534. That actual fear was not necessary is illustrated by *Norden's Case* (1745) Foster 129, where the prosecutor had set out with the express purpose of apprehending the robber and expected his money to be taken from him at the point of a pistol, or by *Rex* v. *Lapier* (1784) 2 East P. C. 557, where an earring was suddenly snatched from the ear of a lady. On the other hand, the class of cases where fear alone was considered sufficient was limited in number. The law would recognize it as grounding the charge of robbery only where the prosecutor was in fear of grievous bodily harm or its equivalent, the theory being that such fear was sufficient to take the place of actual force. Thus, it was held robbery where a woman gave money to prevent threatened rape, *Rex* v. *Blackham* (1787) 2 East P. C. 711, where money was given upon a threat to burn a house with the aid of a mob, *Rex* v. *Astley* (1792) 2 East P. C. 729, or where money was extorted by threatening to drag the prosecutor before a magistrate and accuse him of attempting an unnatural crime. *Rex* v. *Jones* (1776) 1 Leach 164; *Rex* v. *Donnally* (1779) 1 Leach 193. Though neither of the cases last cited necessarily involved personal violence, in both of them the fear of personal violence was considered material, as in the first case the defendant had threatened to raise a mob and in the second the court stated, "it was a threat of personal violence for the prosecutor had everything to fear in being dragged through the streets as a culprit charged with an unnatural crime."

Beyond the point of recognizing fear of bodily injury, the courts have not uniformly gone. It is true that in *Rex* v. *Hickman* (1783) 1 Leach 310, where a threat similar to that in *Rex* v. *Donnally, supra,* was made, the fear of violence did not form the basis of the opinion. But a mere threat to arrest for an ordinary crime was not generally considered as inducing a sufficient fear, since "the only pretense of fear arose from the idea of impending imprisonment which is a species of fear that never was or can be, in contemplation of law, equal to that which the mind must feel from an apprehension of loss of life, etc." *Rex* v. *Newland* (1796) 2 Leach 833.

By the Statute I Vict. c. 87, § 4, the extortion of property by threatening to accuse of an infamous crime was made a separate offense, see *Regina* v. *Henry* (1840) 2 Moo. C. C. 160, and by the